

BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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In the Matter of )  
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Extension of )  
Computer Reservation Systems (CRS) )  
Regulations )  
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Docket No. OST-03-14484

COMMENTS OF VIRGIN ATLANTIC AIRWAYS LTD.

Communications with respect to this document should be addressed to:

Barry K. Humphreys  
Director, External Affairs & Route  
Development  
**VIRGIN ATLANTIC AIRWAYS LTD.**  
The Office, Manor Royal  
Crawley, West Sussex RH10 9NU  
United Kingdom

Phone: +44 1293 747 064  
Fax: +44 1293 747  
073 [barry.humphreys@fly.virgin.com](mailto:barry.humphreys@fly.virgin.com)

Elliott M. Seiden  
**GARFINKLE, WANG, SEIDEN  
& MOSNER, PLC**  
1555 Wilson Boulevard  
Suite 504  
Arlington, VA 22209  
(703) 522-0967  
[elliottseiden@gwsmplc.com](mailto:elliottseiden@gwsmplc.com)  
  
Counsel for  
**VIRGIN ATLANTIC AIRWAYS LTD.**

Date: March 13, 2003

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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**In the Matter of**

**Extension of  
Computer Reservation Systems (CRS)  
Regulations**

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**Docket No. OST-03-14484**

**COMMENTS OF VIRGIN ATLANTIC AIRWAYS LTD.**

This document represents the considered answer of Virgin Atlantic Airways Limited ("Virgin Atlantic") to the Department of Transportation ("the Department")'s notice of proposed rulemaking dated November 15, 2002 (Docket Nos. OST-97-2881, OST-97-3014, OST-98-4775, and OST-99-5888).

1. Virgin Atlantic welcomes the Department's proposal to retain many of its existing rules governing airline computer reservation systems ("CRSs"). However, we are concerned by the Department's proposals to eliminate the mandatory participation rule and the rule preventing CRSs from charging discriminatory fees. Indeed, we believe that these rules should apply to all major US airlines and CRSs, respectively. We are also concerned by the Department's proposal to limit or eliminate access to data currently available to airlines via Marketing Information Data Tapes ("MIDT").
2. Absence of the application of the mandatory participation rule and the non-discrimination rule to all major US airlines and CRSs respectively will have severe adverse effects on competition and hence consumers as currently there are no effective substitutes to CRSs. While Virgin Atlantic sympathises with the Department's concern about the potential for certain airlines to use MIDT data to engage in abusive practices, the Department's proposals will increase the risks to

airlines associated with market entry/expansion and reduce airlines' ability to offer legitimate rewards to travel agents and corporations. We therefore believe that abusive behaviour by airlines should be dealt with via strict application of anti-trust laws and the Department's enforcement provisions.

### **CRS Rules**

3. Removing existing rules governing CRSs will not have a detrimental effect on competition and hence consumers if firstly, viable alternatives to CRSs exist, and secondly, CRSs are at arm's length from airlines. Neither of these assumptions holds in practice.
4. Despite rapid advances in communications technology over the past decade or so, full-service airlines (as opposed to "no frills" or "low frills" airlines) continue to rely crucially on CRSs. This is because the vast majority of travel on these carriers continues to be booked via travel agents, who use CRSs. For example, over 70% of Virgin Atlantic's passengers still book via travel agents, and other international airlines are at least as dependent on travel agents. This is presumably because passengers value the services provided by travel agents, such as their ability to find out seat availability and air fares on a number of airlines. Even "virtual" travel agents typically use CRSs as their booking engine. For example, the two largest on-line travel agencies in the United States, Travelocity (owned by Sabre) and Expedia (developed by Microsoft) use Sabre and Worldspan, respectively.
5. Many full-service airlines also rely on CRSs to transact their direct sales: bookings made over the phone or via airlines' Internet sites and paid for by debit or credit cards are transacted via CRSs. For example, according to a press release dated 28 February 2002,<sup>1</sup> British Airways switched from the British Airways Booking System (BABS) to Amadeus on 23 February 2002.

6. It is also true that there are substantial costs inherent in switching CRS suppliers. This is because of the costs of (re-)training staff and travel agents to use the system. Indeed, according to its press release dated 28 February 2002, British Airways' changeover from BABS to Amadeus involved re-training thousands of staff (as well as travel agents formerly using BABS):

"The change to Amadeus has been a fantastic demonstration of the skills and commitment of everyone in British Airways. More than 11,000 members of staff have been trained and more than 500 experts from the IT, Sales, Customer Service and other departments managed the 'Migration' over Saturday night (23 February)."

According to Hans Jorgensen, Vice President, Airline Business Group at Amadeus quoted in this press release, other airlines of similar size

"...underwent a phased migration over three to six months."

7. The 'essentialness' of CRSs to full-service airlines, as well as the substantial costs associated with switching suppliers, give CRSs not substantially owned or controlled by airlines a substantial level of market power vis-à-vis airlines, particularly where the majority of their revenue is derived from a number of airlines and non-airline sources. CRSs' level of market power vis-à-vis smaller airlines will be even greater, given the smaller proportion of their total revenue derived from such airlines. The potential exists, therefore, for CRSs to act independently of their airline customers' wishes, and to impose different terms and conditions on different customers. That is, the potential exists for CRS providers to abuse their dominant position in 'upstream' markets, access to which is essential for full-service airlines.
8. If the mandatory participation rule and the non-discrimination rule did not apply to all major US airlines and CRSs respectively, the potential would exist for airlines

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<sup>1</sup> British Airways News Release, *British Airways simplifies its business systems to improve customer service and cut costs*, 28 February 2002.

that substantially own or control CRSs<sup>2</sup> and airlines that account for a substantial proportion of a CRS's revenue to use CRSs to compete unfairly. For example, these airlines may participate in the CRS that they own or control or account for a substantial proportion of revenue of at 'higher levels' than they participate in other CRSs, e.g. by making services such as e-ticketing or last seat availability available only to the CRS that they own, control or account for a substantial proportion of revenue of. This would make it 'even more' essential for airlines to participate in this CRS, increasing this CRS's market power and the market power of the owner- or controlling airline or the airline accounting for a substantial proportion of its revenue, particularly where the displays of the CRS are also biased in these airlines' favour. These airlines may also charge other airlines higher usage fees.

9. Given the potential for CRSs, CRS owner- or controlling airlines and airlines that account for a substantial proportion of a CRS's revenue to engage in behaviour that will have severe adverse effects on competition and hence consumers, Virgin Atlantic believes that the mandatory participation rule and the non-discrimination rule should apply to all major US airlines and CRSs, respectively.

### **MIDT Data**

10. MIDT data has two main uses to airlines. First, it provides them with information on (city-pair) markets, such as the potential size of the market (in terms of number of passengers), the proportion of business v leisure traffic, the proportion of traffic carried by its competitors, and so on. MIDT is the only source of this information on international markets available to non-US airlines. This information helps carriers make decisions about whether or not to enter markets or expand capacity in markets already served, by reducing uncertainty.

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<sup>2</sup> Worldspan is 40% owned by Delta, 34% owned by Northwest and 26% owned by American Airlines (although according to press reports dated 5 March 2003, Worldspan is to be sold in mid-2003 to Travel Transaction Processing Corporation, formed by Citigroup Venture Capital Equity Partners and Teachers' Merchant Bank) and Amadeus is 23% owned by Air France, 18% owned by Lufthansa and 18% owned by Iberia.

11. Second, MIDT data provides airlines with information on travel agents' sales in each market. This enables them to offer 'rewards' to travel agents that have been particularly large sellers of tickets of their airline (including by enabling them to check that travel agents have met the targets which make them eligible for rewards). Where an airline is not in a dominant position, such rewards offered by this airline provide clear benefits to travel agents.
12. A substantial amount of 'guesswork' is still involved in using MIDT data, because of what this data does not contain. MIDT data only contains information on tickets transacted by travel agents via the major CRSs: it does not contain information on airlines' direct sales (phone or website sales) or sales transacted by travel agents via other CRSs. It also only contains information on number of bookings: no information is given on the 'value' of tickets purchased within each booking class. Limited information can be ascertained from MIDT data about corporations' behaviour, as travel agents' bookings derive from a number of sources.<sup>3</sup>
13. Nevertheless, it is true that the potential exists for airlines in a dominant position to use MIDT data to compete unfairly. For example, an airline in such a position can offer rewards to travel agents and corporations depending on the extent to which they direct all (or substantially all) of their business to that airline, thereby discriminating between travel agents and between corporations and excluding competitors from access to travel agents' and corporations' business and hence from air transport markets. In a decision dated 14 July 1999, the European Commission found that British Airways had acted in this manner in its dealings with travel agents. Specifically, the Commission found that British Airways was dominant in the UK market for air travel agency services, and that its "Marketing Agreements," "global incentive programmes" and "Performance Reward Scheme" constituted abuses of this dominant position as defined under Article 82 of the EC Treaty, as they had the object and effect of excluding British Airways' competitors

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<sup>3</sup> Information on travel agents who are corporate implants and who derive 100% of their business from this corporation is "masked" within MIDT data.

from the markets for air transport originating in the United Kingdom, and discriminated between travel agents. British Airways was fined 6.8 million Euros and ordered to bring the infringements to an end.

14. However, given that eliminating or even limiting access to data currently available to airlines via MIDT would severely restrict the information available to airlines about markets and travel agent and corporation behaviour, increasing the risks associated with market entry/expansion and reducing airlines' ability to offer legitimate rewards to travel agents and corporations, Virgin Atlantic believes that abusive behaviour by airlines should be dealt with via strict application of anti-trust laws and the Department's enforcement provisions.

WHEREFORE, for the foregoing reasons, Virgin Atlantic urges the Department to apply the mandatory participation rule and the non-discrimination rule to all major US airlines and CRSs respectively, to allow access to data currently available to airlines via MIDT, and to deal with abusive behaviour by airlines via anti-trust laws and the Department's enforcement provisions.

Respectfully submitted,

/s/ Elliott M. Seiden

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Elliott M. Seiden  
**GARFINKLE, WANG, SEIDEN  
& MOSNER, PLC**  
1555 Wilson Boulevard  
Suite 504  
Arlington, VA 22209  
(703) 522-0967  
[elliottseiden@gwsmplc.com](mailto:elliottseiden@gwsmplc.com)

Counsel for  
**VIRGIN ATLANTIC AIRWAYS LTD.**

Dated: March 13, 2003

## CERTIFICATE OF SERVICE

I hereby certify that I have, this 13<sup>th</sup> day of March, 2003, served an electronic copy of the foregoing document entitled "Comments of Virgin Atlantic Airways Ltd." upon the persons whose email addresses are listed below.

/s/ Georgia E. Holliday

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Georgia E. Holliday

[kquinn@pillsburywinthrop.com](mailto:kquinn@pillsburywinthrop.com)  
[gillick@pillsburywinthrop.com](mailto:gillick@pillsburywinthrop.com)  
[gellhorn@pipeline.com](mailto:gellhorn@pipeline.com)  
[david.schwarte@sabre.com](mailto:david.schwarte@sabre.com)  
[bkeiner@crowell.com](mailto:bkeiner@crowell.com)  
[robert.cohn@shawpittman.com](mailto:robert.cohn@shawpittman.com)  
[megan.rosia@nwa.com](mailto:megan.rosia@nwa.com)  
[bob.kneisley@wnco.com](mailto:bob.kneisley@wnco.com)  
[jyoung@bakerlaw.com](mailto:jyoung@bakerlaw.com)  
[dbliss@omm.com](mailto:dbliss@omm.com)  
[cjsimpson@zsrlaw.com](mailto:cjsimpson@zsrlaw.com)  
[rdmathias@zsrlaw.com](mailto:rdmathias@zsrlaw.com)  
[fjcostello@zsrlaw.com](mailto:fjcostello@zsrlaw.com)  
[dcoburn@steptoe.com](mailto:dcoburn@steptoe.com)  
[paul@astahq.com](mailto:paul@astahq.com)  
[carl.nelson@aa.com](mailto:carl.nelson@aa.com)  
[ccorwin@cov.com](mailto:ccorwin@cov.com)  
[bruce.rabinovitz@wilmer.com](mailto:bruce.rabinovitz@wilmer.com)